

LITIGATION ROSTER

SPECIAL TAXES

AUGUST 2008

**Special Taxes  
August 2008**

**NEW CASES**

Case Name

Court/Case Number

NONE

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**CLOSED CASES**

Case Name

Court/Case Number

NONE

Please refer to the case roster for more detail regarding new and closed cases

**Special Taxes**  
**LITIGATION ROSTER**  
August 2008

**ANVARI, ALI v. State Board of Equalization of California**

Contra Costa Superior Court Case No. N07-0526

Filed – 05/02/08

*BOE's Counsel*

Karen Yiu

*BOE Attorney*

Dana Flanagan-McBeth

*Plaintiff's Counsel*

Barzin Barry Sabahat

Anchor Law Group, APC

Issue(s): Was the Notice of Determination of Underground Storage Tank Maintenance Fees properly issued and were the subsequent levy actions taken by the Board appropriate. (Health and Safety Code sections [25299.41](#), [25284](#); Revenue and Taxation Code sections [50109](#), [50136](#), and [50113.1](#)).

Audit/Tax Period: 1/1/97 – 12/6/97

Amount: \$40,196.22

Status: Plaintiff's counsel has agreed to transfer the case from Contra Costa County Superior Court to San Francisco County Superior Court. Stipulation and Order for Transfer of Action was filed in Contra Costa County Superior Court on August 18, 2008, and the order signed on August 22, 2008. Pending transfer to San Francisco County Superior Court.

**CA FARM BUREAU FEDERATION, et al. v. CA State Water Resources Control Board, et al.**

California Supreme Court Case No. S150518

Sacramento Superior Court Case No. 04CS00473

Court of Appeal, Third Appellate District Case No. C050289

Filed – 04/13/04

*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Renee Carter

*Plaintiffs' Counsel*

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is before the California Supreme Court and is pending scheduling of oral arguments. On August 1, 2008, plaintiffs filed a supplemental brief to address issues discussed in a recent California Supreme Court decision involving legal standards applicable to proposition 218. BOE will file a supplemental brief.

**CA FARM BUREAU FEDERATION, et al. v. CA State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 05CS00538

Filed – 01/13/05

*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Renee Carter

*Plaintiffs' Counsel*

David A. Battaglia

Gibson, Dunn & Crutcher LLP

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**CA FARM BUREAU FEDERATION, et al. v. CA State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 06CS00651

Filed – 04/26/06

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**CA FARM BUREAU FEDERATION, et al. v. CA State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 07CS00485

Filed – 02/11/08

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007; 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**DIAGEO-GUINNESS USA, INC., et al. v. California State Board of Equalization**

Sacramento Superior Court Case No. 34-2008-00013031-CU-JR-GDS

Filed – 06/12/08

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Elizabeth Mann, Jeffrey N. Goldberg

McDermot, Will & Emery LLP

Issue(s): (1) Whether BOE has the authority to adopt new Alcoholic Beverage Tax Regulations [2558](#), [2559](#), [2559.1](#), [2559.3](#) and [2559.5](#) (“Regulations”) recently approved by the Office of Administrative Law on June 10, 2008; (2) whether the Regulations are consistent with governing law; (3) whether BOE is required to follow federal regulations in this area; (4) whether BOE failed to comply with the Administrative Procedures Act; and (5) whether the Regulations violate the Commerce Clause of the United States Constitution (Revenue and Taxation Code sections [32002](#), [32152](#), [32451](#) and Business and Professions Code sections [23004](#), [23005](#), [23006](#), [23007](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Hearing on plaintiffs' Motion for Preliminary Injunction was held July 16, 2008. On July 29, 2008, the court issued an Order denying the Motion. Notice of Ruling was served on July 30, 2008. Hearing on plaintiff's Motion for Summary Adjunction of Issues is scheduled for October 28, 2008. BOE's opposition is due October 14, 2008; plaintiffs' reply is due October 23, 2008.

**EMPLOYERS DEPOT, INC. v. The State Board of Equalization**

Sacramento Superior Court Case No. 03AS05773

*Plaintiff's Counsel*

Peter J. Celeste

Professional Law Corporation

Filed – 10/16/03

*BOE's Counsel*

Amy J. Winn

*BOE Attorney*

Mike Llewellyn

Issue(s): Whether the requirement to pay fees into the Toxic Substances Control Account ([Health & Safety Code section 25205.6, subdivision \(c\)](#)) complies with the Administrative Procedure Act and due process.

Audit/Tax Period: 1997-2001

Amount: Unspecified

Status: Mandatory Settlement Conference has been continued to September 25, 2008. Trial is set for October 7, 2008.

**EQUILON ENTERPRISES LLC, et al. v. California State Board of Equalization**

Sacramento Superior Court Case No. 05AS02406

*Plaintiffs' Counsel*

Thomas H. Steele, Pilar M. Sansone

Morrison & Forrester LLP

Filed – 06/01/05

*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Carolee Johnstone

Issue(s): Validity of the Childhood Lead Poisoning Prevention fee ([Health and Safety Code sections 105275-105310](#)) as it applies to Equilon Enterprises LLC, et al.

Audit/Tax Period: 2002

Amount: \$3,910,359.10

Status: Trial court judgment was entered on April 8, 2008 in favor of defendants. Equilon's Notice of Appeal was filed June 4, 2008. The court affirmed its tentative ruling denying Intervenor National Paint & Coatings Association's (NPCA) Motion for Award of Attorneys' Fees. Final Ruling on Motion for Attorney Fees & Costs was entered August 4, 2008.

**GREYHOUND LINES, INC. v. California Board of Equalization**

Sacramento Superior Court Case No. 07CS00054

Filed – 01/12/07

BOE's Counsel

Jeff Rich

BOE Attorney

Renee Carter

Plaintiff's Counsel

William D. Taylor, Eli R. Makus

Hanson, Bridgett, Marcus, Vlahos &amp; Rudy, LLP

Issue(s): Whether consumption of diesel fuel used to operate air conditioning systems on buses was exempt from the diesel fuel tax ([Revenue and Taxation Code section 60501\(a\)\(4\)\(A\)](#); [Regulation 1432](#)).

Audit/Tax Period: 08/01/01-12/31/03; 01/01/04-06/30/05Amount: \$295,583.04

Status: Trial preparation. BOE's responses to plaintiffs' discovery requests are due September 19, 2008.

**MORNING STAR COMPANY v. The State Board of Equalization, et al.**

Sacramento Superior Court Case No. 34-2008-00005600-CU-MC-GDS

Filed – 03/06/08

BOE's Counsel

Molly Mosley

BOE Attorney

Mike Llewellyn

Plaintiff's Counsel

Brian C. Leighton, Richard Todd Luoma

Attorneys at Law

Issue(s): Whether the requirement to pay fees into the Toxic Substances Control Account ([Health & Safety Code section 25205.6, subdivision \(c\)](#)) complies with the Administrative Procedure Act and due process.

Audit/Tax Period: 01/01/03-12/31/05Amount: \$38,698.92

Status: BOE's answer was filed May 12, 2008.

**NORTHERN CA WATER ASSOCIATION, et al. v. State Water Resources Control Board, et al.**

California Superior Court Case No. S150518

Filed – 12/17/03

Sacramento Superior Court Case No. 03CS01776

Court of Appeal, Third Appellate District: 03CS01776

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons &amp; Dunn

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2003-2004Amount: Unspecified

Status: This case is before the California Supreme Court and is pending the scheduling of oral arguments. On August 1, 2008, plaintiffs filed a supplemental brief to address issues discussed in recent California Supreme Court decision involving legal standards applicable to Proposition 218. BOE will file a supplemental brief.

**NORTHERN CA WATER ASSOCIATION, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 04CS01467

Filed – 10/29/04

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly  
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley  
BOE Attorney  
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**NORTHERN CA WATER ASSOCIATION, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 05CS01488

Filed – 10/19/05

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly  
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley  
BOE Attorney  
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**NORTHERN CA WATER ASSOCIATION, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 06CS01517

Filed – 10/18/06

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly  
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley  
BOE Attorney  
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**NORTHERN CA WATER ASSOCIATION, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 34-2008-00003004-CU-WM-GDS

Filed – 02/07/08

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly  
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley  
BOE Attorney  
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**PALO VERDE IRRIGATION DISTRICT v. State Water Resources Control Board, et al.**

Riverside Superior Court Case No. INC 043178

Filed – 05/28/04

Plaintiff's Counsel

David R. Saunders  
Clayson, Mann, Yaeger & Hansen

BOE's Counsel

Molly Mosley  
BOE Attorney  
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**PARMAR, ASHOK V., et al. v. California State Board of Equalization**

Los Angeles Superior Court Case No. BC379013

Filed – 10/11/2007

Plaintiffs' Counsel

Marty Dakessian, Aleen L. Khanjian  
Dakessian & Associates, PLC

BOE's Counsel

Ron Ito  
BOE Attorney  
Dana Flanagan-McBeth

Issue(s): Whether the BOE issued the Notice of Determination to the correct entity and whether plaintiff intentionally evaded payment of excise taxes as a distributor defined under [Revenue and Taxation Code sections 30008 and 30009](#).

Audit/Tax Period: 12/16/93-03/08/95

Amount: \$87,647.00

Status: Hearing on BOE's Motion for Summary Judgment is set for September 22, 2008.



**SANTA CLARA, COUNTY OF, et al. v. State Board of Equalization of California**

San Francisco Superior Court Case No. CPF-06-506789

Filed – 11/15/06

BOE's Counsel

Llewellyn/Graybill

BOE Attorney

Llewellyn/Graybill

Plaintiffs' Counsel

Louise H. Renne, K. Scott Dickey

Renne, Sloan, Holtzman, Sakai LLP

Issue(s): Whether the BOE is under a mandatory duty to tax flavored malt beverages as distilled spirits under [Revenue and Taxation Code section 32451](#).

Audit/Tax Period: None

Amount: Unspecified

Status: Civil proceedings are stayed pending the rule-making process. The Office of Administrative Law (OAL) approved the Board's regulatory changes on June 10, 2008, and sent them to the Secretary of State. The new regulations, adding clarification to the definition of "distilled spirits", are operative October 1, 2008. Industry has challenged the validity of the regulations, in the case known as *Diageo-Guinness USA, Inc. v. BOE*, reported above.

**SILVERS, STEPHEN F., et al. v. State Board of Equalization, et al.**

Los Angeles Superior Court Case No. BC388468

Filed – 04/04/08

BOE's Counsel

Diane Shaw

BOE Attorney

Renee Carter

Plaintiffs' Counsel

William K. Hanagami

The Hanagami Law Firm

Issue(s): Whether BOE has a duty and obligation to assess insurance taxes against Lexington Insurance Company, a Delaware Corporation and non-admitted insurer ([Insurance Code section 1760, et seq. and 1763.1](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Hearing on defendants' Demurrers was held July 25, 2008, and were overruled. Defendants were ordered to file their Answers to the Complaint within 15 days. BOE's Answer was filed August 8, 2008. BOE's responses to discovery propounded by plaintiffs was initially due on September 15, 2008, but is now due on September 30, 2008. Final Status Conference and Mandatory Settlement Conference are scheduled for April 3, 2009. Trial is set for April 13, 2009.

**SMILAND PAINT COMPANY, et al. v. California Department of Health Services, et al.**

Sacramento Superior Court Case No. 01CS01318

Filed – 09/14/01

BOE's Counsel

William L. Carter

BOE Attorney

Mike Llewellyn

Plaintiffs' Counsel

William M. Smiland, William Chase Ahders

Smiland & Khachigian

Issue(s): Whether the Childhood Lead Poisoning Prevention (CLLP) fee under the Childhood Lead Poisoning Prevention Act of 1991 ([Health and Safety Code sections 105275–105310](#)) are properly imposed on plaintiff who never manufactured or distributed lead-based products.

Audit/Tax Period: None

Amount: \$2,400,000.00

Status: Civil proceedings are stayed pending bankruptcy. Order re dismissal set for July 11, 2008.

**SPRINT COMMUNICATIONS COMPANY, L.P. v. State Board of Equalization**

San Francisco Superior Court Case No. CGC-06-455982

Filed – 09/07/06

*Plaintiff's Counsel*

Richard N. Wiley  
Attorney at Law

*BOE's Counsel*

Wang/Standen

*BOE Attorney*

Carolee Johnstone

Issue(s): Whether the BOE appropriately applied the Emergency Telephone Users Surcharge ([Revenue and Taxation Code section 41001 et seq.](#)) to certain charges Sprint bills to its California customers.

Audit/Tax Period: 12/01/97-04/30/00

Amount: \$2,289,936.82

Status: Oral argument at the trial has been continued from July 25, 2008 to November 14, 2008.

**U.S. SMOKELESS TOBACCO BRANDS INC. v. State Board of Equalization**

San Francisco Superior Court Case No. CGC-07-463592

Filed – 05/22/07

*Plaintiff's Counsel*

Amy L. Silverstein, Edwin P. Antolin  
Silverstein & Pomerantz LLP

*BOE's Counsel*

Julian O. Standen

*BOE Attorney*

Sharon Brady Silva

Issue(s): [Revenue & Taxation Code section 30123](#) requires distributors of tobacco products to pay an excise tax on distribution of tobacco products based on the wholesale cost of the products. Plaintiff purchased the product from an affiliated manufacturing corporation owned by the same parent company. Plaintiff contends that the taxable wholesale cost should be based on its price to purchase from the manufacturer, rather than its sales price to distributors, which it previously used to calculate the tax base.

Audit/Tax Period: 01/94-11/96

Amount: \$725,977.90

Status: On May 2, 2008, the court denied the plaintiff's Motion for Summary Judgment. The trial date has been continued from June 30, 2008 to September 8, 2008.

**ULTRAMAR, INC. v. S. Kimberly Belshe, et al.**

USDC, Central Dist. CA Case No. CV 04-6468 MRP

Filed – 08/04/04

*Plaintiff's Counsel*

Richard E. Nielsen  
Pillsbury, Winthrop, Shaw, Pittman LLP

*BOE's Counsel*

Elisa Wolfe

*BOE Attorney*

Carolee Johnstone

Issue(s): Ultramar, Inc., a paint manufacturer, contends that certain regulations issued with respect to the Childhood Lead Poisoning Prevention (CLPP) fee ([Health and Safety Code sections 105275 – 105310](#)) should be declared invalid and unconstitutional and that the BOE and Department of Public Health should be enjoined from enforcing the CLPP program and collecting and assessing the CLPP fee against Ultramar.

Audit/Tax Period: 1991-1999 and 2001

Amount: \$6,348,189.19

Status: The lawsuit was stayed by the District Court on July 14, 2005, after an abstention and sovereign immunity (11<sup>th</sup> amendment) motion was heard by the court.

### **DISCLAIMER**

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